

MT LEGISLATIVE HISTORY

Chapter 447 19 75

Bill H _____ S 311e

Original bill & hist. C

H. Committee on _____

S. Committee on Pub. Health, Wel. Safe

Hearing Date(s) 3-11 C

Hearing Date(s) 2-8 C

3-15 C

2-15 C

3-20 C

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Date Out 3-20 C

2-15 C

Did this bill originate in an interim committee? Yes No

Committee

Report

1 *Senate* BILL NO. *316*
 2 INTRODUCED BY *Lee Flynn STEPHENS Healy Martin*
 3 *Rosell Blaylock Seibel LYNCH*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 5 69-5201, AND 69-5212, R.C.M. 1947, TO MEET FEDERAL
 6 REQUIREMENTS BY REDEFINING OUTPATIENT FACILITIES, INCLUDING
 7 A DEFINITION OF CONSTRUCTION AND REQUIRING APPROVAL FROM THE
 8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE
 9 CONSTRUCTION OF HEALTH CARE FACILITIES."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 69-5201, R.C.M. 1947, is amended to
 13 read as follows:

14 "69-5201. Definitions. As used in this chapter, unless
 15 the context clearly indicates otherwise:

16 (1) "Hospital" means any health care facility licensed
 17 by the department of health and environmental sciences to
 18 provide, by or under the supervision of licensed physicians,
 19 services for medical diagnosis, treatment, and care of
 20 injured, disabled, or sick persons. Services provided may or
 21 may not include obstetrical care. A health care facility in
 22 order to be licensed as a hospital must have an organized
 23 medical staff; shall provide twenty-four (24) hour nursing
 24 care by licensed professional nurses and shall be in
 25 compliance with the regulations for licensed hospitals as

1 promulgated and adopted by the state department of health
 2 and environmental sciences.

3 (2) "Hospital related facility" means a facility
 4 licensed by the department of health and environmental
 5 sciences to provide any or all of the following: diagnosis;
 6 treatment; medical or nursing care or medically related
 7 rehabilitation services. Such facilities include, but are
 8 not limited to, outpatient facilities, public health
 9 centers, rehabilitation facilities, long-term care
 10 facilities, infirmaries, mental health and mental
 11 retardation institutions, alcohol and drug dependency
 12 centers and half-way houses. A health care facility in order
 13 to be licensed as a "hospital related facility" shall be in
 14 compliance with the regulations, for the specific category
 15 of facility, as promulgated and adopted by the state
 16 department of health and environmental sciences.

17 ~~{a}--"Outpatient-facility"--means-a-place-located-in-or~~
 18 ~~apart-from-a-hospital-which-provides-to-ambulatory-patients~~
 19 ~~not-requiring-hospitalization-the-services-of--persons~~
 20 ~~licensed-to-practice-medicine-or-dentistry-in-the-state-of~~
 21 ~~Montana-and-which-makes-provision-for-its-patients-to~~
 22 ~~receive-a-reasonably-full-range-of-physical-or-mental~~
 23 ~~diagnostic-and-treatment-services;~~

24 ~~{i}--"Outpatient-facility"---A---is-operated-as-an~~
 25 ~~organizational-component-of-a-hospital-and-may-establish~~

~~observation--beds--"Observation--beds"--are---these---beds
established--for--use-by-an-outpatient-recovering-from-minor
surgery-or-other-treatment-and-will-be-occupied-for-a-period
of-time-not-in-excess-of-six-(6)-hours.~~

~~{ii}--"Outpatient-facility--B"--is-operated-apart-from-a
hospital-and-may-not-include-observation-beds.~~

(a) "Outpatient facility -- A" means a physically
separate component of a licensed hospital, or a medical
clinic or other establishment owned or operated by a
licensed physician or physicians, which has an observation
bed or beds and which provides to patients, not requiring
hospitalization, the services of persons licensed to
practice medicine or dentistry in the state of Montana. An
"observation bed" is a bed used by a patient recovering from
surgery or other treatment. No patient shall be allowed to
remain in an outpatient facility for more than six (6)
hours.

(b) "Outpatient facility -- B" means a facility
operated physically apart from a hospital, other than a
medical clinic or other establishment owned or operated by a
licensed physician or physicians, which provides to
ambulatory patients, not requiring hospitalization, the
services of persons licensed to practice medicine or
dentistry in the state of Montana, but which does not have
an observation bed or beds as defined in subsection (2) (a).

~~(b)~~ (c) "Public health centers" means a publicly owned
facility utilized by a local health unit for the provision
of public health services, including related public
facilities such as laboratories, clinics, and administrative
offices operated in connection with public health centers.

~~(e)~~ (d) "Rehabilitation facility" means a facility
providing community service which is operated for the
primary purpose of assisting in the rehabilitation of
disabled persons through an integrated program under
competent professional supervision including: medical
services and evaluation; and psychological, social and
vocational services and evaluation.

~~(d)~~ (e) "Long-term care facility" means a place which
provides skilled nursing care to a total of two (2) or more
persons or personal care to more than three (3) persons, who
by reason of illness or disability are unable to properly
care for themselves and are not related to the owner or
administrator by blood or marriage, and may be defined as
follows:

(i) "Skilled nursing facilities" are establishments
furnishing continuous skilled nursing care and related
services twenty-four (24) hours a day.

(ii) "Intermediate care facilities -- A" are
establishments furnishing limited skilled nursing care and
personal care.

1 (iii) "Intermediate care facilities -- B" are
2 establishments providing only personal care and services to
3 residents.

4 (iv) "Combination facilities" are establishments
5 providing two (2) or more of the following services: skilled
6 nursing care and intermediate care -- A and/or B.

7 (v) Hotels, motels, boarding houses, rooming houses, or
8 similar accommodations providing for transients, students,
9 or persons not requiring institutional health care are not
10 considered to be long-term care facilities.

11 ~~(e)~~ (f) "Infirmiry" means a facility located in a
12 university, college, government institution, or industry,
13 for the treatment of the sick or injured.

14 (i) "Infirmiry -- A" provides outpatient and inpatient
15 care.

16 (ii) "Infirmiry -- B" provides outpatient care only.

17 (3) "Person" means any individual, firm, partnership,
18 association or corporation, or governmental unit.

19 (4) "Governmental unit" means the state, a state
20 agency, any county, municipality, political subdivision of
21 the state or an agency of any political subdivision.

22 (5) "Resident" means a person who is in a long-term
23 care facility as a patient or for personal care.

24 (6) "Health care facility" means a hospital, hospital
25 related facility or long-term care facility.

1 (7) "Department" means state department of health and
2 environmental sciences.

3 (8) "Construction" means the erection, expansion,
4 remodeling or alteration of any new or existing facility,
5 the capital expenditure for which amounts to fifty thousand
6 dollars (\$50,000) or more in any twelve month period; or any
7 substantial change in services, or any increase or decrease
8 in the number of beds in excess of ten percent (10%) of the
9 licensed capacity of the facility, or in excess of ten (10)
10 beds, whichever is the lesser; or any purchase of
11 therapeutic or diagnostic equipment (excluding replacement
12 of existing equipment) in any twelve month period, at a cost
13 exceeding two percent (2%) of the facility's total operating
14 costs for the most recently completed fiscal year up to a
15 maximum of one hundred thousand dollars (\$100,000), or
16 exceeding ten thousand dollars (\$10,000), whichever is
17 larger. All exemptions from this definition must
18 nevertheless be consistent with the state medical facilities
19 plan of the department."

20 Section 2. Section 69-5212, R.C.M. 1947, is amended to
21 read as follows:

22 "69-5212. Alteration---or---addition---to---facility
23 Construction, expansion, remodeling, or alteration of a
24 facility -- approval of plans and specifications by the
25 department of health and environmental sciences.

(1) The department may adopt rules to require an applicant or licensee who contemplates alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction. Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility.

(2) Penalties for failure to obtain prior approval of the department are as follows:

(a) Any person who constructs any new health care facility as defined in section 69-5201 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in section 69-5201.

(b) Any person who expands, remodels or alters an existing health care facility as defined in section 69-5201 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the state general fund. An application for approval must be

submitted to the department in a form together with information as the department may prescribe. The application shall include:

- (i) a narrative description of the proposed project;
- (ii) the number and type of beds and/or services to be provided;
- (iii) the estimated cost;
- (iv) the source of financing;
- (v) the expected time for completion of the proposed project; and
- (vi) a simple line-drawing showing major dimensions of the proposed project.

Within seven (7) days after receipt of the application by the department, it shall send notice thereof to every health care facility in the same licensing class within the state of Montana located within one hundred (100) miles of the applicant facility. The department shall notify the applicant, in writing, of the approval or disapproval of the proposal within ninety (90) days after the application is submitted to the department, otherwise the application is deemed approved.

(3) No application may be approved unless the action proposed:

- (a) is necessary to provide required health care in the area to be served;

1 (b) can be economically accomplished and maintained;
2 and

3 (c) will contribute to the orderly development of
4 adequate and effective health services.

5 (4) In making the determinations enumerated in
6 subsection (3) the following shall be considered:

7 (a) the compatibility with needs shown in the
8 appropriate state plan provided by those statutes relating
9 to facilities, contained in sections 69-5301 through 69-5313
10 of this title;

11 (b) the availability of facilities or services which
12 may serve as alternates or substitutes;

13 (c) the need for special equipment and services in the
14 area;

15 (d) the possible economies and improvement in services
16 to be anticipated from the operation of combined central
17 services including, but not limited to, laboratory,
18 research, radiology, pharmacy, laundry and purchasing;

19 (e) the adequacy of financial resources and sources of
20 future revenues; and

21 (f) the availability of sufficient manpower in the
22 several professional disciplines.

23 (5) An approved application for construction is valid
24 for one (1) year from the date of issue, but may be extended
25 by the department for a period of six (6) months.

1 (6) If the department disapproves an application for
2 construction of a facility, it shall notify the applicant of
3 its actions and afford the applicant an opportunity to
4 request a hearing before the board of health and
5 environmental sciences. When this hearing is desired, the
6 applicant shall notify the department in writing within
7 fifteen (15) days after the notice of disapproval is
8 received. If the decision, after hearing, is adverse, the
9 applicant may appeal to the district court as provided in
10 section 82-4216, R.C.M. 1947."

-End-

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

<u>Senate</u> BILL NO.	<u>ENTERED</u> <u>COMM.</u>	<u>DATE</u> <u>CONSIDERED</u>	<u>OUT OF</u> <u>COMM.</u>	<u>DO PASS</u> <u>DATE</u>	<u>DO NOT</u> <u>PASS</u> <u>DATE</u>	<u>DO PASS</u> <u>AS AMEND.</u> <u>DATE</u>	<u>BE CON-</u> <u>CURRED IN</u> <u>DATE</u>	<u>BE CONC. IN</u> <u>AS AMENDED</u> <u>DATE</u>	<u>BE NOT CON-</u> <u>CURRED IN</u> <u>DATE</u>
52	1-13-75	1-25, 1-30	1-30-75		1-30-75				
53	1-13-75	1-25, 1-30	1-30-75	1-30-75		WITHOUT RECOMMENDATION			
61	1-13	1-16, 1-23	1-30-75			1-30-75			
73	1-16	1-23, 1-30	1-30-75	1-30-75					
182	1-23	1-28	1-28-75	1-28-75					
190	1-23	1-28	1-28-75			1-28-75			
216	2-3-75	2-13, 2-15	2-15-75			2-15-75			
217	2-6-75	2-13, 2-15	2-15-75			2-15-75			
245	1-27-75	2-4, 2-25	2-25-75			2-25-75			
250	1-27-75	2-6, 2-15	2-15-75			2-15-75			
304	1-29-75	2-4, 2-8	2-8-75			2-8-75			
316	1-30-75	2-8, 2-15	2-15-75	2-15					
322	1-30-75	2-8, 2-15	2-15-75		2-15				
323	1-30-75	2-15, 2-18 2-4, 2-8	2-8-75			2-8-75			
329	2-31-75	2-11, 2-18	2-18-75			2-18-75			
330	1-31-75	2-11, 2-18	2-18-75			2-18-75			
331	1-31-75	2-22-75	2-22-75	2-22-75					

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

February 8, 1975

The tenth meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Norman on the above date in Room 405 of the State Capitol Building at approximately 11:00 a.m.

ROLL CALL: All members were present except Senator Colberg.

The meeting was called to order by Chairman Norman. To comply with a member's request to be excused early, it was decided the committee would act on Senate Bills previously heard.

CONSIDERATION OF SENATE BILL NO. 323: This bill, sponsored by Senator Lee at the request of the Department of Social Rehabilitative Services, is an act to require County Welfare Departments to administer food stamp programs and social services programs as may be directed by the Department of Social and Rehabilitative Services and providing an effective date.

It was moved by Senator Lee that SB 323 DO PASS. All members present voted in favor of the bill.

CONSIDERATION OF SENATE BILL NO. 304: This bill was introduced by Senator Healy. It would amend the fire extinguisher requirements.

Senator Norman moved this bill be amended on page 2, line 9, the word "such" be stricken. This motion was carried unanimously.

Senator Stephens moved this bill SB 304 DO PASS, AS AMENDED. All present members voted in favor of the bill.

CONSIDERATION OF SENATE BILL 316: This bill sponsored by Senator Lee, is an act to amend sections 69-5201, and 69-5212, R.C.M. 1947, to meet federal requirements by redefining out-patient facilities, including a definition of construction and requiring approval from the Department of Health and Environmental Sciences for the Construction of Health Care Facilities.

Mr. Chad Smith, representing the Montana Hospital Association, opened the hearing of this bill as a proponent. He said one of the reasons for introducing this bill was that the public is concerned about the purchase of unnecessary equipment. He pointed out that this bill had been presented before but did not pass because of inclusion of doctors. He said the construction of the bill meets federal legislation requirements. He also stated that on page 3, out-patient facilities were redefined as health care facilities to act as a catch-all.

Mr. George Fenner, of the Department of Health and Environmental Sciences and the Division of Hospital and Medical Facilities gave testimony as a proponent (See Attachment 1).

A representative of the Montana Hospital Association, Mr. Bill Leary, was in support of this bill (See Attachment 2).

Mr. Rod Gudgel of the Montana Nursing Home Association, rose as a proponent.

Another proponent was Mr. Robert Johnson, an administrator of the Comprehensive Health Planning Division (See Attachment 3).

Mr. Ray Gulich, Public Lobbyist, rose in opposition to SB 316 (See Attachment 4).

CONSIDERATION OF SENATE BILL NO 322: An act to amend section 69-5201, R.C.M. 1947, to permit the hospital related facility known as outpatient facility..B to include observation beds.

This bill, also sponsored by Senator Lee, was of a similar nature to SB 316, so discussion was tied in of the two.

Mr. Jerry Loendorf, representing the Montana Medical Association, rose in favor of SB 322 but felt there should be an amendment (See Attachment 5).

After closing of both bills by Senator Lee, the meeting was opened to questioning from the committee.

Senator Olson wanted to know, if there is a health care building within a short distance of a hospital and they had adequate space to handle out-patients, would they have to get an application from the state.

For clarification of confusion between the two bills Senator Lee explained 316 restricts use of outpatient beds, where 322 permits use of outpatient beds in a Class B observation facility; SB 316 exempts doctor's offices from licensing.

There being no further discussion, hearing on 316 and 322 was closed.

ADJOURN: There being no further business to discuss, the meeting was adjourned at 12:30.

AMENDMENT TO SENATE BILL 316

Amend Senate Bill 316

Section 1, page 3, line 17

FOLLOWING: "hours"

INSERT: "the construction, expansion or alteration of
outpatient facility-- A" is not subject to
the provision of Section 69-5212, R.C.M. 1947."



Montana Hospital Association

P. O. BOX 543

HELENA, MONTANA 59601

TESTIMONY IN SUPPORT OF SENATE BILL 316 "CERTIFICATION OF NEED"

Chairman Norman, Members of the Senate Public Health, Welfare and Safety Committee: for the record, my name is William E. Leary, Executive Director of the Montana Hospital Association. I am appearing here today in support of the passage of Senate Bill 316 as it is presently written.

Senate Bill 316 is in its truest form health care planning legislation and I place emphasis on the word planning, for by its adoption, it will be one tool which can be utilized by the State Department of Health to prevent the duplication of costly health care facilities and equipment in any community in Montana when there is no demonstrated need for the new facility or equipment or for extensive remodeling for new services.

The implementation of Senate Bill 316 will actually require hospital Boards, nursing home owners, physicians and the most important people, the consumers, to sit down together and do real community health care planning far in advance of submitting a request for approval for a Certification of Need permit from the State Department of Health. Thus, we can see in Montana maximum health care delivery at a minimum cost.

Over a period of time, I feel that through the implementation of Senate Bill 316 and other legislation which will be needed as a result of the passage of federal law, we will see in Montana the most efficient use of our health care delivery system for the benefit of all the people of our state.

Certification of Need legislation represents a collective judgment made for the public good and as such the special interests of any one hospital, any one nursing home and even a group of physicians in any given community must be laid aside in the interest of balancing what the public wants with what it will pay for.

In a sense, it is a control bill in that it will control expansion of unneeded services and facilities but allow for the creation and development of health care services that are truly needed in the community.

The Montana Hospital Association does support Certification of Need as perhaps the first step towards effective community planning for a new health care delivery system providing that Certification of Need encompasses all factions of the delivery system, hospitals, nursing homes, rehabilitation centers, out-patient facilities, commonly referred to as surgi-centers, and public health centers.

Presently there are some 24 or 25 states in the nation that have adopted and implemented Certification of Need legislation. Our neighboring states of North Dakota, Oregon, Washington and South Dakota are examples of the success of this program.

On the national level, the Congress in passing and the President in signing Public Law 93-641, commonly referred to as the National Health Planning and Resources Development Act of 1974, have recognized the importance of every state having a Certification of Need program in addition to the 1122 program mandated under Medicare. I would like to quote Section 1523-4A-4B from the law which was enacted January 4, 1975.

"Each state agency of a state designated under Section 1521(v)(3) shall, accept as authorized under subsection B perform within the state the following functions: 4A. Serve as a designated planning agency of the state for the purposes of Section 1122 of the Social Security Act if the state has made an agreement pursuant to such section, and B. Administer a state Certificate of Need program which applies to new institutional health services proposed to be offered or developed within the state and which is satisfactory to the Secretary. Such program shall provide for review and determination of need prior to the time such services, facilities, and organizations are offered or developed or substantial expenditures are undertaken in preparation for such offering or development, and provide that only those services, facilities, and organizations found to be needed shall be offered or developed in the state."

An analysis of Public Law 93-641 points out that "States are required to have Certificate of Need program by end of the first regular session of the state legislature which begins after the bill's enactment." Inasmuch as this bill was enacted on January 4, 1975 and the 44th Legislative Session of the Montana Legislature opened on January 6, 1975, we are mandated in this legislative session to pass a Certificate of Need bill.

You have before you the only Certificate of Need bill which has been proposed, which has been endorsed by the State Department of Health, the Montana Hospital Association, Montana Nursing Home Association, State Comprehensive Health Planning Agency.

I urge your favorable consideration and passage of Senate Bill 316.

Thank you.

February 8, 1975

Statement in support of Senate Bill 316, "An Act to Amend Section 69-5201, and 69-5212, R.C.M., 1947, to meet Federal Requirements by Redefining Out-Patient Facilities Including a Definition of Construction and Requiring Approval from the Department of Health and Environmental Sciences for the Construction of Health Care Facilities" (Certificate of Need)

Mr. Chairman, members of the Committee, I am Bob Johnson, Administrator, Division of Comprehensive Health Planning, Department of Health and Environmental Sciences, and am appearing today on behalf of the Montana Advisory Council for Comprehensive Health Planning in support of Senate Bill 316. The Council is appointed by the Governor and acts in an advisory capacity to the Division of Comprehensive Health Planning.

Senate Bill 316 will redefine out-patient facilities, and most important, it will require approval from the Department of Health and Environmental Sciences for construction or modernization of health care facilities. Requirements for approval for construction of health care facilities are commonly referred to as "certificate of need" laws.

We feel that SB 316 is important to assure the orderly development of health facilities in Montana and to help control rising health care costs. The certificate of need process is based upon the assumption that health care institutions exist for the benefit of those served and upon the further assumption that those served by the institution should have some voice in the development and operation of those institutions. Issuance of a certificate of need to an applicant is evidence that the applicant's plans will most efficiently meet the community's health needs.

The increased appreciation of good health by society has resulted in efforts to reduce the rising costs and maldistribution of health resources by

applying the certificate of need and approval process. Consequently, at least twenty-two states have already passed laws requiring certificate of need approval prior to construction or the expenditure of significant sums of money by health facilities. In addition, the Federal government has recognized the necessity for state certificate of need laws which require approval prior to the construction of health facilities. The recently passed "National Health Planning and Resources Development Act" (PL 93-641) provides that no state may receive Federal funds for several health programs unless that state has passed a certificate of need law within a certain time period. In the last year, Federal grants for the affected health programs in Montana amounted to over \$3 million.

A certificate of need law is an objective listed in the Montana State Plan for Health, and the Advisory Council for Comprehensive Health Planning supports SB 316 and urges its passage.

I will be available to answer any questions you have about this bill.

Senate Bill 316

"Certificate of Need"

Testimony - George M. Fenner, Administrator, Division of Hospital and Medical Facilities, Montana State Department of Health and Environmental Sciences

Committee Hearing - Senate - Public Health and Welfare

Mr. Chairman, Members of the Committee, for the record my name is George M. Fenner. I am administrator of the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences.

We have worked closely with the Montana Hospital Association and the Montana Nursing Home Association over the past few months in drafting this proposed legislation.

Similar legislation was introduced by this Department in the 1969 Legislative session and was opposed by the Montana Hospital Association because it was felt to be not all inclusive and to be discriminatory. The Montana Medical Association and Montana Nursing Home Association opposed it as being a deterrent to free enterprise.

Again during the 43rd Legislative session, after extensive coordination with the Montana Hospital Association and the Montana Nursing Home Association, the Department drafted and submitted similar proposed legislation, which was again opposed by the Montana Hospital Association. This legislation passed the House and was killed in committee in the Senate

Section 1122, Title I, of the Social Security Act as amended and promulgated in Section 221 of Public Law 92-603 requires review and approval of applications from health care facilities which propose a capital expenditure of \$100,000 or more, an increase in bed capacity or a substantial change in services if the applicant desires reimbursement through Medicare, Medicaid, or Maternal and Child Health. Governor Judge designated the Department of Health as the

designated planning agency to administer this program in January of 1973.

Therefore, what is being proposed to you here today is not new or radical legislation. In fact, the procedure outlined in this proposed legislation, with some modifications, is being applied today in at least 90 per cent of all instances which would be covered by this legislation. We then are talking about less than 10 per cent of those applicants who are not covered by existing Federal legislation under P.L. 92-603, Hill-Burton, FMA, Small Business Administration, etc. It is important, however, when considering the comprehensive health planning concept that 100 per cent of all proposals be subjected to an identical review. To not do so is discriminatory in that 90 per cent of all hospitals and hospital-related facilities would be required to comply with an overall planning concept, yet those sponsors who did not use Federal monies for construction, and who stated they did not want Medicaid or Medicare reimbursement, would be allowed to overbuild an area or duplicate services, which if not practicable would inevitably contribute to the cost of care delivered to consumers.

I believe, as a health professional and a state employee, that health care facilities should continue to be privately and municipally owned and operated, but must be part of a total community health care delivery system which is publicly regulated and held publicly accountable. The conditions of meaningful competition as applied to this industry simply do not exist, and neither the industry nor the public is prepared to pay the price.

This legislation, if passed, would mandate systematic coordination among health agencies and health care institutions and facilitate more efficient function which would assist in meeting a total community's health needs collectively. The design of a state's health care system should revolve

around the patient and his needs and not around the needs or convenience of providers and governmental agencies. This bill is designed to provide effective results through planning and coordination.

1. Three nursing homes, all relatively new, built in 1971, 1972, and 1973 by the same corporation, with private funds, and no areawide or state review, went through the throes of foreclosure in 1974. I am prepared to furnish the names of these facilities to the chairman, but in the interest of confidentiality do not wish to divulge this information in a public hearing. At least two of these facilities would not have been approved due to overbedding and unavailability of staff if they had been mandated to go through the Certificate of Need process.

2. A proprietary hospital was constructed in the state contrary to advice given by this Department that to do so would overbed the area. Private funds were used. The result has been that a hospital in a neighboring area operated by the county had a drastic occupancy reduction. The new hospital, however, did not enjoy a high occupancy rate either, and requested that a distinct part of the newly constructed beds be licensed as nursing home beds. Therefore, two hospitals were operating in an uneconomic fashion with low occupancy. This can only inevitably result in a higher cost of care to the consumer, or the closure of one hospital. The latter happened during 1974.

Over 30 states now have Certificate of Need legislation, much of which is more stringent than this proposed legislation.

Thank you, and I urge your favorable consideration of S.B. 316.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

February 15, 1975

The thirteenth meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Norman on the above date in Room 405 of the State Capitol Building at approximately 11:00 a.m.

ROLL CALL: All members were present except Senator Stephens (excused).

CONSIDERATION OF SENATE BILL NO. 250: An act for the revision of the laws relating to obscenity and indecent exposure; repealing Sections 94-5-504, 94-8-110 and 94-8-110.1, R.C.M. 1947.

As the committee could not act on the bill positively as it was originally drafted, an amendment was offered by the subcommittee, consisting of Senators Chet Blaylock, Stan Stephens, and Robert Lee, with the aid of the Staff Attorney, Woody Wright (See Attached Amendments 1).

It was moved by Senator Blaylock that these amendments be approved. The motion was carried unanimously in the roll call vote. Senator Blaylock then moved that Senate Bill 250 DO PASS AS AMENDED.

RECONSIDERATION OF SENATE BILL NO. 323: This bill would require County Welfare Departments to administer food stamp programs; and social services programs as may be directed by the Department of Social and Rehabilitation Services; etc.

This bill was returned to committee in order to be further amended. (See Attachment Amendments 2). Senator Himsel moved to accept these amendments. The motion was carried unanimously. Senator Lee then moved SB 323 DO PASS AS AMENDED. The roll call vote showed a unanimous vote in favor of the motion.

ACTION ON SENATE BILL 316: This is an act to meet Federal requirements by redefining outpatient facilities, including a definition of construction and requiring approval from the Department of Health and Environmental Sciences for the construction of health care facilities.

After some discussion on this bill it was moved by Senator Lee that SB 316 DO PASS. The motion carried with Senator Olson voting "No" on the roll call vote.

ACTION ON SENATE BILL 322: An act to permit the hospital related facility known as outpatient facility -- B to include observation beds.

STANDING COMMITTEE REPORT

~~January~~ Feb. 15 19 75

MR. ~~PRESIDENT~~.....

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY.....

having had under consideration Senate..... Bill No. 316.....

Respectfully report as follows: That Senate..... Bill No. 316.....

DO PASS
EXCISE

BN:vm

**PUBLIC HEALTH, WELFARE
& SAFETY COMMITTEE**

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 217	Allow SRS to license and supervise adult foster family care homes for three or fewer aged persons or disabled adults.	2/24	Norman	3/8 3/17	(subcommittee) BE CONCURRED IN AS AMENDED	3/17
SB 304	Amend fire extinguisher requirements	2/17	Healy Mehrens	3/11 3/17	BE CONCURRED IN	3/17
SB 116	Meet fed. requirements by redefining outpatient facilities, including definition of construction.	2/21	Lee Flynn	3/11 3/17 3/20	TABLE INDEFINITE BE CONCURRED IN AS AMENDED	3/20
SB 123	Require county welfare to administer food stamp program & social services program directed by SRS.	2/24	Lee	3/11 3/17	BE CONCURRED IN	3/17
SB 331	Require board of pharmacists to waive the requirement for registration of certain practitioners to dispense dangerous drugs.	2/26	Norman Boylan	3/13	BE CONCURRED IN	3/17
HB 378	Recodify present code governing formulation of comprehensive health centers.	2/26 3/19	Lynch Flynn	3/13 3/17 3/20	BE CONCURRED IN AS AMENDED BE CONCURRED IN AS AMENDED	3/17 3/20

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY
HOUSE OF REPRESENTATIVES
March 11, 1975

A meeting of the Public Health, Welfare and Safety Committee was held on Tuesday, March 11, 1975, at 10:30 a.m. in Room 108 of the Capitol Building. Chairman Red Menahan presided with all members present except Rep. Lynch, excused.

The following bills were heard in this order:

SB 304
SB 316
SB 323
SB 61
SB 386
SJR 22

SB 304--SPONSOR: Senator Jack Healy, district 44, said this was just a housekeeping bill mandating the state to comply with federal standards in the use of portable fire extinguishers. It requires that written approval be acquired from the fire marshall for use of some chemicals which have been found to be harmful. William Penttila, Chief Fire Marshall, said that the deleted material is out of date. Neil Flaherty, Fire Protection Consultants, said they are presently installing equipment using gas that is harmless.

SB 316--SPONSOR: Senator Bob Lee, district 43, said this was the "certificate of need" bill, where a request must be submitted before any construction or remodeling of any hospital facilities may be implemented. Proponent Chad Smith, Montana Hospital Association, said the bill states that a hospital or certain other health facilities shall not engage in remodeling unless there is a need, since these are non-profit establishments. He said this will curtail any competition, and hopefully, cause the different facilities to work together to consolidate any specialized services, i.e., cobalt services, and maternity care. He said that the hospitals, the Board of Health, and the Nursing Home Association support the bill. Smith said that this will not prevent additions where the need is found. The state Board of Health will determine this need, and anyone that operates observation beds will fall under the regulations of this bill, except for outpatient facilities, and their definitions. Proponent William Leary, Montana Hospital Association, submitted Exhibit I in support of the bill. George Fenner, Department of Health, submitted Exhibit II in support of the bill. Dan Dyrdaahl, Montana Nursing Home Association, said that the needs of the people should be foremost.

Jerry Loendorf, Montana Medical Association, submitted amendments that would define outpatient facilities in connection with a hospital (Exhibit III). I would allow the construction of outpatient facility-A without prior approval of the Board of Health. The MMA is particularly interested in the outpatient facility known as a "surgical center" in which minor

surgery not requiring more than six hours hospitalization could be performed. The "surgical center" concept was first utilized in Phoenix and resulted in substantial savings.

Bob Johnson, Comprehensive Health Planning, Department of Health, supported the bill without the amendments suggested by Loendorf. He submitted Exhibit IV in support.

In closing, Lee said he was opposed to the amendments suggested, as the "certificate of need" is trying to avoid exactly that. He said that the Board of Health will not refuse application for this outpatient facility.

Dussault said she could not see any legislative intent for a "certificate of need" bill.

SB 323--SPONSOR: Senator Bob Lee, district 43, said this bill would require the county welfare departments to honor the food stamp and social services program. In one instance, Madison County refused to administer any food stamp program. Proponent Jack Carlson, SRS Department, stated that the state supervises the county administered welfare system, of which neither the food stamp nor the social services are mentioned. This would only be a housekeeping measure to fix the responsibilities for these programs with the counties.

SB 61-- SPONSOR: Senator Larry Fasbender, district 17, said this was a follow-up to HB 9 , which would decriminalize intoxication by considering it a disease. The one difference between the two bills is that a person who commits an act involving only intoxication shall not be criminalized, but would be liable for any other violations of the law. The addition to the bill (section 3, subsection (3)) would provide that the police or peace officers shall not share any liability. Fasbender further stated that the peace officer had several alternatives in the handling of this person in section 69-6219, and this bill provides for the transport to the proper facility. Section 3 gives provisions whereby, if there are no other facilities available, the officer can detain the person in jail for his own protection. Proponent Bob Solomon, Department of Health, submitted Exhibit V in support. Don McDonald, Alcoholic Rehabilitation Association, submitted Exhibit VI, and Melvin Vegge, Montana Jaycees, submitted Exhibit VII.

Gould said he liked that concept, but wanted to know if this would be a step closer to the decriminalization of marijuana. Fasbender replied that the only way to cure alcoholism is medically, and more important is to help the person become useful again. He said that imprisonment is not the cure, but treatment, and the same thing could be done for a drug problem. Harper agreed that they should treat, and not incarcerate. Monahan asked about the case where the person is just plain drunk, and is not an alcoholic. He said that per-

Wm. Henry
3-11-75
Amend I

FACT SHEET IN SUPPORT OF SB 316, CERTIFICATE OF NEED*

THE PROBLEM:

1. Under utilized facilities increase cost of health care to consumers. Empty health facility beds cost money to construct, maintain and staff; costs which must be paid by users of health care services.
2. Under utilized duplicative services also unnecessarily increase costs to health care consumers. Two expensive cobalt units in an area which can only support one create an added expense to consumers.
3. Health Manpower is diluted when overbedding and over-building is allowed to go uncontrolled. Resulting personnel shortages create intensive competition for personnel and increase costs.

THE STATUS:

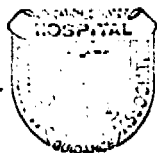
1. Under Medicare and Medicaid DHEW recognized the need to control spiraling health care costs. Section 1122 of Social Security Act, PL 92-603 requires health care facilities obtain a Certificate of Compliance from planning agencies as a requirement of participation. Montana's contract for administration of Sec. 1122 with HHEW provides essentially the same standards as SB 316.
2. Federal planning legislation, PL 93-641, Section 1523 (b)(2) requires state Certificate of Need law by end of a legislative session that begins after enactment of PL 93-641 (Jan. 4, 1975) as a condition for states to receive full federal funding for health planning and resource development.

THE SOLUTION:

1. Certificate of Need, SB 316 will help each community to assure the availability, accessibility, and viability of quality health care services in the state of Montana.
2. Certificate of Need will allow effective state-wide and local planning so that health care services will be most efficient and effective and still insure that human dignity will be preserved.
3. Certificate of Need will provide that the state government not the federal government direct responsibility involving regulatory control of capital expenditures and of health care providers in changing their scope of services or, in the case of prospective providers, introducing new services.
4. Certificate of Need will insure full grant funding under PL 93-641. State agencies implementing PL 93-641 will be placed on a conditional basis if state Certificate of Need legislation is not enacted, resulting in a loss of federal funding, and will not permit the state to provide a complete and viable health planning program.
5. Certificate of Need will assist in controlling cost of health care by reducing and then eliminating unneeded or unnecessary duplicative services or facilities through orderly and planned methods, regulated by the state government.
6. Certificate of Need will enhance the financing of construction of needed health facilities, as bonding and lending institutions will be assured that the facility proposed has met planning requirements and the test of demonstrated need.

*Endorsed By:

State Comprehensive Health Planning Agency Montana Nursing Home Association
Department of Health and Environmental Sciences Montana Hospital Association



Montana Hospital Association

P. O. BOX 543

HELENA, MONTANA 59601

TESTIMONY IN SUPPORT OF SENATE BILL 316

"Certification of Need"

Chairman Menahan, Members of the House Public Health, Welfare and Safety Committee:

For the record, my name is William E. Leary, Executive Director of the Montana Hospital Association, registered lobbyist #72-74, appearing today in support of and seeking your concurrence in the passage of Senate Bill 316.

Senate Bill 316 is in its truest form health care planning legislation and I place emphasis on the word "planning", for by its adoption, it will be one tool which can be utilized by the State Department of Health to prevent duplication of costly health care facilities and equipment in any community in Montana when there is no demonstrated need for the new facility or equipment or for extensive remodeling for new services.

The implementation of Senate Bill 316 will actually require hospital boards, nursing home owners, physicians and most importantly the consumers, to sit down together and to do real community health care planning far in advance of submitting a request for approval for a certification of need permit from the State Department of Health. Thus, we can see in Montana maximum health care delivery at a minimum cost.

Over a very short period of time, I feel that through the implementation of Senate Bill 316 and other legislation which will be needed as a result of the passage of the National Health Planning and Resources Development Act of 1974, we will see in Montana the most efficient use of our health care delivery system for the benefit of all the people of our state.

Certification of Need legislation represents a collective judgment made for the public good and as such, the special interests of any one hospital, any one nursing home whether it be nonprofit or proprietary, and even any one physician or group of physicians in any given community, must be laid aside in the interests of balancing what the public wants with what it will pay for.

In a sense, this is controlling legislation in that it will control the expansion of unneeded services and facilities but it will allow for the constructive creation and development of health care services that are truly needed in the community.

The Montana Hospital Association and its member hospitals does support certification of need as perhaps the first step towards effective community planning for a new health care delivery system providing that certification of need encompasses all factions of the delivery system; that is, hospitals, nursing homes, rehabilitation centers, outpatient facilities which are commonly referred to as surgi-centers, and public health centers.

Presently there are some twenty-five states in our nation that have adopted and implemented certification of need legislation. Our neighboring states of North Dakota, Oregon, Washington, South Dakota, are examples of the success of this program.

On the national level, the Congress in passing and the President in signing Public Law 93-641, commonly referred to as the National Health Planning and Development Act of 1974, have recognized the importance of the states' rights in having a certification of need program developed and implemented by each individual state rather than a federally mandated program such as is encompassed in Section 1122 under the National Medicare program. It is refreshing to note that the writers of Public Law 93-641 did recognize that all states in our nation have differences and have the intelligence of legislators and state agency people to write the kind of certification of need legislation that they want for their state. This might be in some slight degree different from the national Medicare certification of need program.

I would like to quote Section 1523-4A-4B from Public Law 93-641 which was enacted January 4, 1975.

"Each state agency of a state designated under Section 1521(v)(3) shall except as authorized under subsection (v), perform within the state the following functions: (4)(A) serve as the designated planning agency of the state for the purposes of Section 1122 of the Social Security Act if the state has made an agreement pursuant to such section and (B) administer a state certificate of need program which applies to new institutional health services proposed to be offered or developed within the state and which is satisfactory to the Secretary. Such program shall provide for review and determination of need prior to the time such services, facilities, and organizations are offered or developed or substantial expenditures are undertaken in preparation for such offering or development, and provide that only those services, facilities, and organizations found to be needed shall be offered or developed in the state."

An analysis of Public Law 93-641 points out that "states are required to have certificate of need program by end of the first regular session of the state legislature which begins after the bill is enacted." Inasmuch as this bill was enacted on January 4, 1975 and the 44th Legislative Session of the Montana Legislature opened on January 6, 1975 and there will be no Montana Legislative Session in 1976 we are mandated in this Legislative Session to pass a certificate of need bill.

You have before you the only certificate of need bill which has been proposed, which has been endorsed by the State Department of Health, Montana Hospital Association, Montana Nursing Home Association, State Comprehensive Health Planning Agency and which passed the Senate without amendment by a 40-10 vote.

I urge your favorable consideration and concurrence with the Senate in passing Senate Bill 316.

Thank you.

6 10 11 11
11 10
Senate Bill 316

"Certificate of Need"

Testimony - George M. Fenner, Administrator, Division of Hospital and Medical Facilities, Montana State Department of Health and Environmental Sciences

Committee Hearing - Senate - Public Health and Welfare

Mr. Chairman, Members of the Committee, for the record my name is George M. Fenner. I am administrator of the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences.

We have worked closely with the Montana Hospital Association and the Montana Nursing Home Association over the past few months in drafting this proposed legislation.

Similar legislation was introduced by this Department in the 1969 Legislative session and was opposed by the Montana Hospital Association because it was felt to be not all inclusive and to be discriminatory. The Montana Medical Association and Montana Nursing Home Association opposed it as being a deterrent to free enterprise.

Again during the 43rd Legislative session, after extensive coordination with the Montana Hospital Association and the Montana Nursing Home Association, the Department drafted and submitted similar proposed legislation, which was again opposed by the Montana Hospital Association. This legislation passed the House and was killed in committee in the Senate

Section 1122, Title I, of the Social Security Act as amended and promulgated in Section 221 of Public Law 92-603 requires review and approval of applications from health care facilities which propose a capital expenditure of \$100,000 or more, an increase in bed capacity or a substantial change in services if the applicant desires reimbursement through Medicare, Medicaid, or Maternal and Child Health. Governor Judge designated the Department of Health as the

designated planning agency to administer this program in January of 1973.

Therefore, what is being proposed to you here today is not new or radical legislation. In fact, the procedure outlined in this proposed legislation, with some modifications, is being applied today in at least 90 per cent of all instances which would be covered by this legislation. We then are talking about less than 10 per cent of those applicants who are not covered by existing Federal legislation under P.L. 92-603, Hill-Burton, FICA, Small Business Administration, etc. It is important, however, when considering the comprehensive health planning concept that 100 per cent of all proposals be subjected to an identical review. To not do so is discriminatory in that 90 per cent of all hospitals and hospital-related facilities would be required to comply with an overall planning concept, yet those sponsors who did not use Federal monies for construction, and who stated they did not want Medicaid or Medicare reimbursement, would be allowed to overbed an area or duplicate services, which if not practicable would inevitably contribute to the cost of care delivered to consumers.

I believe, as a health professional and a state employee, that health care facilities should continue to be privately and municipally owned and operated, but must be part of a total community health care delivery system which is publicly regulated and held publicly accountable. The conditions of meaningful competition as applied to this industry simply do not exist, and neither the industry nor the public is prepared to pay the price.

This legislation, if passed, would mandate systematic coordination among health agencies and health care institutions and facilitate more efficient function which would assist in meeting a total community's health needs collectively. The design of a state's health care system should revolve

around the patient and his needs and not around the needs or convenience of providers and governmental agencies. This bill is designed to provide effective results through planning and coordination.

1. Three nursing homes, all relatively new, built in 1971, 1972, and 1973 by the same corporation, with private funds, and no areawide or state review, went through the throes of foreclosure in 1974. I am prepared to furnish the names of these facilities to the chairman, but in the interest of confidentiality do not wish to divulge this information in a public hearing. At least two of these facilities would not have been approved due to overbedding and unavailability of staff if they had been mandated to go through the Certificate of Need process.

2. A proprietary hospital was constructed in the state contrary to advice given by this Department that to do so would overbed the area. Private funds were used. The result has been that a hospital in a neighboring area operated by the county had a drastic occupancy reduction. The new hospital, however, did not enjoy a high occupancy rate either, and requested that a distinct part of the newly constructed beds be licensed as nursing home beds. Therefore, two hospitals were operating in an uneconomic fashion with low occupancy. This can only inevitably result in a higher cost of care to the consumer, or the closure of one hospital. The latter happened during 1974.

Over 30 states now have Certificate of Need legislation, much of which is more stringent than this proposed legislation.

Thank you, and I urge your favorable consideration of S.B. 316.

March 11, 1975

Statement in support of Senate Bill 316, "An Act to Amend Section 69-5201, and 69-5212, R.C.M., 1947, to meet Federal Requirements by Redefining Out-Patient Facilities Including a Definition of Construction and Requiring Approval from the Department of Health and Environmental Sciences for the Construction of Health Care Facilities" (Certificate of Need)

Mr. Chairman, members of the Committee, I am Bob Johnson, Administrator, Division of Comprehensive Health Planning, Department of Health and Environmental Sciences, and am appearing today on behalf of the Montana Advisory Council for Comprehensive Health Planning in support of Senate Bill 316. The Council is appointed by the Governor and acts in an advisory capacity to the Division of Comprehensive Health Planning.

Senate Bill 316 will redefine out-patient facilities, and most important, it will require approval from the Department of Health and Environmental Sciences for construction or modernization of health care facilities. Requirements for approval for construction of health care facilities are commonly referred to as "certificate of need" laws.

We feel that SB 316 is important to assure the orderly development of health facilities in Montana and to help control rising health care costs. The certificate of need process is based upon the assumption that health care institutions exist for the benefit of those served and upon the further assumption that those served by the institution should have some voice in the development and operation of those institutions. Issuance of a certificate of need to an applicant is evidence that the applicant's plans will most efficiently meet the community's health needs.

The increased appreciation of good health by society has resulted in efforts to reduce the rising costs and maldistribution of health resources by

applying the certificate of need and approval process. Consequently, at least twenty-two states have already passed laws requiring certificate of need approval prior to construction or the expenditure of significant sums of money by health facilities. In addition, the Federal government has recognized the necessity for state certificate of need laws which require approval prior to the construction of health facilities. The recently passed "National Health Planning and Resources Development Act" (PL 93-641) provides that no state may receive Federal funds for several health programs unless that state has passed a certificate of need law within a certain time period. In the last year, Federal grants for the affected health programs in Montana amounted to over \$3 million.

A certificate of need law is an objective listed in the Montana State Plan for Health, and the Advisory Council for Comprehensive Health Planning supports SB 316 and urges its passage.

I will be available to answer any questions you have about this bill.

Robert K. Johnson
C.H.P.

PROPOSED AMENDMENT

TO

SENATE BILL NO. 316

Amend Senate Bill No. 316 in Section 1, at page 3, line 17,
by inserting after the word and punctuation "hours.", the
following:

"The establishment, construction, or alteration of
Outpatient facility -- A is not subject to the provisions
of Section 69-5212."

Ant. Federal Res.
James F. Hendry

Amend Bill Section 2, line 2.

Following is proposed

Amend Section 1 and 2

SB 227--Roger Tippy, staff attorney, submitted amendments requested by the sponsor and the department of health, which would strike the 30-day limit, allowing for a reasonable time limit; strike the \$10 fee limit; and the contingent approval requirement (see exhibit III).

MURPHY MOVED TO AMEND PAGE 5, LINE 16, BY STRIKING "TEN DOLLARS (\$10)" AND INSERTING "THIRTY-FIVE DOLLARS (\$35)". Th thought there should be some fee limit, and said the bill would probably go into a conference committee to work out a fee schedule anyway. MOTION CARRIED UNANIMOUSLY.

RASMUSSEN MOVED TO AMEND PAGE 5, LINES 16-18, BY STRIKING ", and collectable only upon departmental approval of the plat or subdivision". MOTION CARRIED UNANIMOUSLY.

Fagg said that the 30-day limit would not allow for the person who has to take the percolation test when the ground is frozen. FAGG MOVED TO AMEND PAGE 5, LINE 5, BY STRIKING "THIRTY (30) DAYS" AND INSERTING "a reasonable time not to exceed one (1) year". MOTION CARRIED UNANIMOUSLY.

PALMER MOVED SB 227 AS AMENDED BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

SB 304--FAGG MOVED SB 304 BE CONCURRED IN. MOTION CARRIED WITH BABCOCK ABSTAINING. (Gould, Lester, & Harper vote AYE on an absentee vote).

SB 316--Murphy said that this bill would be detrimental to the smaller communities, and that it was a "hospital relief bill". He suggested that an interim study be made. MURPHY MOVED TO TABLE INDEFINITELY AND REQUESTED THAT THE CHAIRMAN OF PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE ASK FOR A PRIORITIES STUDY. MOTION CARRIED UNANIMOUSLY. (Lester, Herlevi, Gould, Dussault, PALmer not available for vote).

SB 323--MURPHY MOVED SB 323 BE CONCURRED IN. He said this would just require the county to comply with court laws. MOTION CARRIED UNANIMOUSLY (with Gould voting NAY absentee and Herlevi, Lester, Harper, and Palmer vote AYE absentee).

SB 245--HOLMES MOVED TO AMEND PAGE 6, LINE 25, FOLLOWING "discharge of", by striking "waste water", AND INSERTING "sewage as defined in section 69-4802".

MURPHY MOVED SB 245 AS AMENDED BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY (Lester, Herlevi, Harper voting AYE absentee). Mr. Tippy staff attorney said that it may be attested on the floor that the federal statutes do not give the states this discretion, but that the case may be brought to court. He said they could submit the bill anyway.

SB 387--HOLMES MOVED SB 387 BE CONCURRED IN. MOTION CARRIED WITH MURPHY ABSTAINING. (Harper, Lester, Herlevi, Palmer, Gould voted AYE absentee)

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY
HOUSE OF REPRESENTATIVES
March 20, 1975

A meeting of the Public Health, Welfare & Safety Committee was held on Thursday, March 20, 1975, at 10:30 a.m. in Room 428A of the Capitol Building, with Chairman Menahan presiding. Representatives Lynch, McFadden and Murphy were excused with all other members present.

The committee went into executive discussion on the following bills:

SB 316
SB 378

The committee discussion SB 316 in executive session to reconsider their action, and SB 378 was referred back to committee from the Committee of the Whole meeting for purposes of amendments.

SB 316--Committee action on March 17 by the committee was to table the bill indefinitely. SPONSOR: Robert Lee, district 43, said that this "certificate of need" bill only allows the Department of Health to determine if a new facility or remodeling work is needed before the work is commenced. This is a planned way of expanding health care facilities. Proponent William Leary, MT Hospital Assn., said that there is a potential lost of money from federal grants and loans, if the state does not demand a "certificate of need" bill (exhibit I). Through applying with the Department of Health, he felt that the consumers and providers would get together to supply these services. He said that it was a planning bill with a control feature, requiring any group of persons to apply with the state before remodeling or building, as they must have the assurance of the need. Proponent Speaker Pat McKittrick, district 42, said that the concept of the bill is very important in considering the quality of health care system. Further, under federal statutes, Title 93-641, it mandates some "certificate of need" legislation from the states. Without this bill, they may be jeopardizing receipt of federal monies. Based on its own good merits, and the implications of the federal law, he urged the committee to support the bill. George Finner, Hospital Administrator, Dept. of Health, said that 90% of all the health care facilities are subject to their office, and about 10% of the facilities do not want to participate in Medicaid or Medicare. This 10%, without any control, could effect the whole function of the community, and the money received. Rod Gudgel, MT Nursing Home Assn., said that because of the lack of control over this 10%, three facilities were opened, without having sufficient funds or a source of future funding, these facilities were forced into bankruptcy. If there had been a "certificate of need" bill, they would have at least had a review.

In closing, Lee said that the real need for the bill is to control health care, to prevent any duplication of services.

Under discussion, Faqq said that in effect they would be regulating private enterprise, and he felt this was wrong. Fenner replied that this is really a followup of the federal regulations, and is

not a state regulation. Fagg said that they may as well as regulate motels, stores, etc. Babcock asked if this required private facilities to meet state regulations and Fenner replied that they were trying to regulate new facilities that would be opening. Dussault said that because of the number of new facilities in Missoula, hospitals have had to cut down their staffing. Fagg said that unless a private enterprise asks for state or federal money, they should have no jurisdiction over them. Fenner replied that these people receive money only if they participate in Medicare or Medicaid programs, but those who do not, can compete with the state facilities, which causes an increase in all the facilities.

Gould suggested an amendment which would allow the legislative council to enact an effective date, depending on if the state would lose federal money if this legislation did not pass. Lee replied that this would not be necessary, as they are more concerned about the consumer, and their needs, than with the loss of federal money. Leary stated that this would effect those doctors who wanted to build a clinic, so long as they have observation beds.

Miss Cathy Campbell, Comprehensive Health Planning, Dept. of Health, brought out some points for clarification. If a hospital facility has an inefficient number of bed patients, would this cause the prices to fluctuate. She said that 38% of the costs are paid by the federal gov't, and if one facility is less efficient, the federal gov't. and the insurance companies will pay that cost. Private enterprise would not effect these hospitals. As for a cut in other federally funded programs, such as regional mental health aid, alcoholic rehabilitation programs, etc, is it true that this would be cut in 1980, instead of immediately; and Miss Campbell said that as far as they can see, they will not be cut until 1980. Holmes asked if gov't. interference was the cause for high prices, Miss Campbell said that it may have made it more difficult for hospitals, but because of the peculiarities of the medical field as compared to other fields, there is no real answer.

SB 378--Menahan said that after being approached by Rep. Bardenouve, about an appropriations problem with the bill, and conferring with Senator Lynch, sponsor for the bill, he requested to refer the bill back to committee for reconsideration. The provision on page 4, lines 7 through 19, allowing for the transfer of funds from Warm Springs to follow the patient to this regional center, would cause a cut in funds received from the federal gov't. If they take away money from the Warm Springs budget, a patient could sue for this money. Any patient could come back at any time to complain about the services not received and the state has a court case. Upon request, Chairman Menahan suggested that this provision be stricken from the bill. Rep. Bardenouve & Speaker McKittrick supported this amendment.

In discussion, Dussault felt that mental health centers should become non-profit organizations as over \$1 million would be involved in this bill. The committee's amendment, made on March 17, changing "shall" to "may" on page 5, line 2, would make it permissive to incorporate, and REQUESTED TO AMEND OUT THIS AMENDMENT ON PAGE 5, LINE 2, FOLLOWING "regions", BY STRIKING "may", AND

AND REINSERT "shall". By changing this back, it would make it mandatory that all health centers be non-profit organizations. Without this provision, she said that it would create an administrative problem and would attest the state's accountability. MOTION CARRIED WITH ALL IN FAVOR EXCEPT FINLEY ABSTAINING.

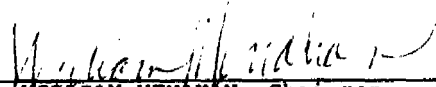
ANDERSON MOVED TO AMEND SB 378 ON PAGE 4, LINES 7 THROUGH 19, BY STRIKING THESE LINES IN THEIR ENTIRETY. Menahan explained that the controversy over this provision, is that the Department of Institutions would be allowing the transfer of funds from one agency to another where funds were not appropriated. MOTION CARRIED WITH ALL IN FAVOR EXCEPT HOLMES OPPOSED.

With these added amendments, the committee recommended to send the bill back to the committee of the whole with AN AS AMENDED BE CONCURRED IN Recommendation.

SB 316--GOULD MOVED SB 316 DO NOT PASS.

DUSSAULT MADE A SUBSTITUTE MOTION THAT SB 316 AS AMENDED BE CONCURRED IN. MOTION CARRIED WITH MENAHAN, HOLMES, DUSSAULT, HARPER, HERLEVI, LESTER, AND PALMER IN FAVOR, AND ANDERSON, BABCOCK, FAGG, FINLEY, GOULD, AND RASMUSSEN OPPOSED.

There being no further business, the meeting was adjourned.



WILLIAM MENAHAN, Chairman



Gloria Wong, Secretary

SENATE BILL NO. 316

INTRODUCED BY LEE, FLYNN, STEPHENS, HEALY, MATHERS,
ROSELL, BLAYLOCK, SEIBEL, LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
69-5201, AND 69-5212, R.C.M. 1947, TO MEET FEDERAL
REQUIREMENTS BY REDEFINING OUTPATIENT FACILITIES, INCLUDING
A DEFINITION OF CONSTRUCTION AND REQUIRING APPROVAL FROM THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE
CONSTRUCTION OF HEALTH CARE FACILITIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-5201, R.C.M. 1947, is amended to
read as follows:

"69-5201. Definitions. As used in this chapter, unless
the context clearly indicates otherwise:

(1) "Hospital" means any health care facility licensed
by the department of health and environmental sciences to
provide, by or under the supervision of licensed physicians,
services for medical diagnosis, treatment, and care of
injured, disabled, or sick persons. Services provided may or
may not include obstetrical care. A health care facility in
order to be licensed as a hospital must have an organized
medical staff; shall provide twenty-four (24) hour nursing
care by licensed professional nurses and shall be in

compliance with the regulations for licensed hospitals as
promulgated and adopted by the state department of health
and environmental sciences.

(2) "Hospital related facility" means a facility
licensed by the department of health and environmental
sciences to provide any or all of the following: diagnosis;
treatment; medical or nursing care or medically related
rehabilitation services. Such facilities include, but are
not limited to, outpatient facilities, public health
centers, rehabilitation facilities, long-term care
facilities, infirmaries, mental health and mental
retardation institutions, alcohol and drug dependency
centers and half-way houses. A health care facility in order
to be licensed as a "hospital related facility" shall be in
compliance with the regulations, for the specific category
of facility, as promulgated and adopted by the state
department of health and environmental sciences.

~~{a}--"Outpatient-facility"--means-a-place,-located-in-or
apart-from-a-hospital,-which-provides-to-ambulatory-patients
not-requiring-hospitalization-the-services-of--persons
licensed-to-practice-medicine-or-dentistry-in-the-state-of
Montana,-and-which--makes--provision--for--its--patients--to
receive--a--reasonable--full--range--of--physical--or-mental
diagnostic-and-treatment-services-~~

~~{i}--"Outpatient--facility-----A"--is--operated--as--an~~

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~~organizational--component--of--a--hospital--and--may--establish
observation--beds--"Observation--beds"---are---these---beds
established--for--use--by--an--outpatient--recovering--from--minor
surgery--or--other--treatment--and--will--be--occupied--for--a--period
of--time--not--in--excess--of--six--(6)--hours.~~

~~(ii)--"Outpatient--facility---B"--is--operated--apart--from--a
hospital--and--may--not--include--observation--beds.~~

(a) "Outpatient facility -- A" means a physically
separate component of a licensed hospital, or a medical
clinic or other establishment owned or operated by a
licensed physician or physicians, which has an observation
bed or beds and which provides to patients, not requiring
hospitalization, the services of persons licensed to
practice medicine or dentistry in the state of Montana. An
"observation bed" is a bed used by a patient recovering from
surgery or other treatment. No patient shall be allowed to
remain in an outpatient facility for more than six (6)
hours.

(b) "Outpatient facility -- B" means a facility
operated physically apart from a hospital, other than a
medical clinic or other establishment owned or operated by a
licensed physician or physicians, which provides to
ambulatory patients, not requiring hospitalization, the
services of persons licensed to practice medicine or
dentistry in the state of Montana, but which does not have

an observation bed or beds as defined in subsection (2) (a).

~~(b)~~ (c) "Public health centers" means a publicly owned
facility utilized by a local health unit for the provision
of public health services, including related public
facilities such as laboratories, clinics, and administrative
offices operated in connection with public health centers.

~~(c)~~ (d) "Rehabilitation facility" means a facility
providing community service which is operated for the
primary purpose of assisting in the rehabilitation of
disabled persons through an integrated program under
competent professional supervision including: medical
services and evaluation; and psychological, social and
vocational services and evaluation.

~~(d)~~ (e) "Long-term care facility" means a place which
provides skilled nursing care to a total of two (2) or more
persons or personal care to more than three (3) persons, who
by reason of illness or disability are unable to properly
care for themselves and are not related to the owner or
administrator by blood or marriage, and may be defined as
follows:

(i) "Skilled nursing facilities" are establishments
furnishing continuous skilled nursing care and related
services twenty-four (24) hours a day.

(ii) "Intermediate care facilities -- A" are
establishments furnishing limited skilled nursing care and

1 personal care.

2 (iii) "Intermediate care facilities -- B" are

3 establishments providing only personal care and services to

4 residents.

5 (iv) "Combination facilities" are establishments

6 providing two (2) or more of the following services: skilled

7 nursing care and intermediate care -- A and/or B.

8 (v) Hotels, motels, boarding houses, rooming houses, or

9 similar accommodations providing for transients, students,

10 or persons not requiring institutional health care are not

11 considered to be long-term care facilities.

12 ~~(e)~~ (f) "Infirmar~~y~~" means a facility located in a

13 university, college, government institution, or industry,

14 for the treatment of the sick or injured.

15 (i) "Infirmar~~y~~ -- A" provides outpatient and inpatient

16 care.

17 (ii) "Infirmar~~y~~ -- B" provides outpatient care only.

18 (3) "Person" means any individual, firm, partnership,

19 association or corporation, or governmental unit.

20 (4) "Governmental unit" means the state, a state

21 agency, any county, municipality, political subdivision of

22 the state or an agency of any political subdivision.

23 (5) "Resident" means a person who is in a long-term

24 care facility as a patient or for personal care.

25 (6) "Health care facility" means a hospital, hospital

1 related facility or long-term care facility.

2 (7) "Department" means state department of health and

3 environmental sciences.

4 (8) "Construction" means the erection, expansion,

5 remodeling or alteration of any new or existing facility,

6 the capital expenditure for which amounts to fifty thousand

7 dollars (\$50,000) or more in any twelve month period; or any

8 substantial change in services, or any increase or decrease

9 in the number of beds in excess of ten percent (10%) of the

10 licensed capacity of the facility, or in excess of ten (10)

11 beds, whichever is the lesser; or any purchase of

12 therapeutic or diagnostic equipment (excluding replacement

13 of existing equipment) in any twelve month period, at a cost

14 exceeding two percent (2%) of the facility's total operating

15 costs for the most recently completed fiscal year up to a

16 maximum of one hundred thousand dollars (\$100,000), or

17 exceeding ten thousand dollars (\$10,000), whichever is

18 larger. All exemptions from this definition must

19 nevertheless be consistent with the state medical facilities

20 plan of the department."

21 Section 2. Section 69-5212, R.C.M. 1947, is amended to

22 read as follows:

23 "69-5212. Alteration---or---addition---to---facility

24 Construction, expansion, remodeling, or alteration of a

25 facility -- approval of plans and specifications by the

department of health and environmental sciences.

(1) The department may adopt rules to require an applicant or licensee who contemplates CONSTRUCTION OF, alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction. Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility.

(2) Penalties for failure to obtain prior approval of the department are as follows:

(a) Any person who constructs any new health care facility as defined in section 69-5201 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in section 69-5201.

(b) Any person who expands, remodels or alters an existing health care facility as defined in section 69-5201 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the

state general fund. An application for approval must be submitted to the department in a form together with information as the department may prescribe. The application shall include:

- (i) a narrative description of the proposed project;
- (ii) the number and type of beds and/or services to be provided;
- (iii) the estimated cost;
- (iv) the source of financing;
- (v) the expected time for completion of the proposed project; and
- (vi) a simple line-drawing showing major dimensions of the proposed project.

Within seven (7) days after receipt of the application by the department, it shall send notice thereof to every health care facility in the same licensing class within the state of Montana located within one hundred (100) miles of the applicant facility. The department shall notify the applicant, in writing, of the approval or disapproval of the proposal within ninety (90) days after the application is submitted to the department, otherwise the application is deemed approved.

(3) No application may be approved unless the action proposed:

- (a) is necessary to provide required health care in

1 the area to be served;

2 (b) can be economically accomplished and maintained;
3 and

4 (c) will contribute to the orderly development of
5 adequate and effective health services.

6 (4) In making the determinations enumerated in
7 subsection (3) the following shall be considered:

8 (a) the compatibility with needs shown in the
9 appropriate state plan provided by those statutes relating
10 to facilities, contained in sections 69-5301 through 69-5313
11 of this title;

12 (b) the availability of facilities or services which
13 may serve as alternates or substitutes;

14 (c) the need for special equipment and services in the
15 area;

16 (d) the possible economies and improvement in services
17 to be anticipated from the operation of combined central
18 services including, but not limited to, laboratory,
19 research, radiology, pharmacy, laundry and purchasing;

20 (e) the adequacy of financial resources and sources of
21 future revenues; and

22 (f) the availability of sufficient manpower in the
23 several professional disciplines.

24 (5) An approved application for construction is valid
25 for one (1) year from the date of issue, but may be extended

1 by the department for a period of six (6) months.

2 (6) If the department disapproves an application for
3 construction of a facility, it shall notify the applicant of
4 its actions and afford the applicant an opportunity to
5 request a hearing before the board of health and
6 environmental sciences. When this hearing is desired, the
7 applicant shall notify the department in writing within
8 fifteen (15) days after the notice of disapproval is
9 received. If the decision, after hearing, is adverse, the
10 applicant may appeal to the district court as provided in
11 section 82-4216, R.C.M. 1947."

-End-